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## **IMPORTANT DECISIONS**

- Subjective satisfaction of detaining authority is vitiated if factum of release of detenu on bail is not considered 4441 (Kar)
- Right of accused to grant of statutory bail on ground that charge-sheet is filed after 90 days for filing charge-sheet would commence from date on which detention of accused is authorised in custody as Magistrate or Sessions Judge deems fit. And not from date on which body warrant is served on Jail Authorities 4443 (Kar)
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**CHIEF EDITOR : V. R. MANOHAR, ADVOCATE**



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**RASH AND NEGLIGENT DRIVING :  
NEED FOR RE-LOOK AT THE SENTENCING POLICY**

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1. Deaths being caused by rash and negligent driving are increasing day in and day out. Precious lives are lost leaving the dependents of the victim without any source of livelihood and virtually resort to begging in the streets. This has created a great alarm to the society posing a danger to the life of several others like foot-path users, other vehicles driven causing heavy loss to the property as well. The Supreme Court in a recent case<sup>1</sup> pointed out the inherent dangers to which the society is exposed and unlimited and irreparable damage caused to human lives and suggested various remedies, as well as for the need for re-look at the sentencing policy in relation to the offence under S. 304-A of IPC (dealing with death cannot by rash and negligent act).

2. In the recent case referred to,<sup>2</sup> the Supreme Court stated thus :—

i) It is the duty of every right-thinking citizen to show veneration to law, so that an orderly, civilized and peaceful society emerges;

ii) It has to be borne in mind that law is averse any kind of chaos;

iii) It is totally intolerant of anarchy;

iv) If one defies law, he has to face the wrath of law, depending on the concept of proportionality that the law recognizes;

1. State of Punjab v. Surabh Bakshi, 2015 Cr LJ 2459 (SC).

2. Ibid.

v) It can never be forgotten that the purpose of criminal law legislated by the competent legislature subject to judicial scrutiny within the constitutionally established parameters is to protect the collective interest and save every individual that forms a constituent of the collective from unwarranted hazards;

vi) It is sometimes said in an ego-centric and uncivilized manner that law cannot bind individual actions which are perceived as flaws by the large body of people, but truth is and has to be that when the law withstands the test of constitutional scrutiny in a democracy the individual notions are to be ignored. At certain times, crimes assume more account and gravity depending on the nature and impact of the crime on society. No Court should ignore the same being swayed by passion of mercy;

vii) It is the obligation of the Court to constantly remind itself that the right of the victim and be it said, on certain occasions the person aggrieved as well as the society at large can be victims, never be marginalized. In this context, one may recapitulate the saying of Justice Benjamin N. Cardozo : 'Justice though due to the accused, is also due to the accuser too.' The requisite norm has to be the established principles laid down in precedents; and

viii) It is neither to be guided by a sense of sentimentality nor to be governed by preju-



dices, we are constrained to commence with this prologue because we have to deal with the concept of adequacy of quantum of sentence imposed under S. 304-A of IPC.

3. In *Mehtaab's case*,<sup>3</sup> the Supreme Court has further laid down as follows :—

i) It is the duty of the Court to award just sentence to a convict against whom the charge is proved;

ii) While any mitigating or aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated;

iii) Sentence has to be fair not only to the accused but also to the victim and the society;

iv) It is also the duty of the Court to duly consider the aspect of rehabilitating the victim; unfortunately the above factors are missing; and

v) Cogent reasons have to be assigned for lesser sentence when an innocent life has been lost.

4. The Supreme Court stressed the need for enhanced compensation based on the financial capacity of the accused.<sup>4</sup> It was further laid down that the scheme adopted by the State of Kerala will be applicable for all the States. The scheme provides for compensation upto 5 lakhs and the States can be asked to pay this compensation under S. 357-A, Cr. P.C. in the event of the accused failing to pay 2 lakhs.<sup>5</sup>

However, the Supreme Court said that it cannot be said as a proposition of law that whenever an accused offers acceptable compensation for rehabilitation of a victim, regardless of the gravity of the crime under S. 304-A, there can be reduction of sentence.<sup>6</sup>

5. In *Dalbir Singh's case*,<sup>7</sup> the Supreme Court pointed out thus :—

i) When automobiles have become death

3. AIR 2014 SC 1820 : (2014) AIR SCW P. 1656.

4. *Suresh v. State of Haryana*, AIR 2015 SC P. 518.

5. *Ibid.*

6. Note 1 Para 9.

7. *Dalbir Singh v. State of Haryana*, AIR 2000 SC 1677.

traps any leniency shown to drivers, who are found guilty of rash driving would be at the risk of further escalation of road accidents;

ii) All those who are manning the steering of automobiles, particularly professional drivers must be kept under constant reminders of their duty to adopt utmost care and also the consequences befalling them in case of dereliction;

iii) One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and frolic.

6. The benevolent provisions of S. 4 of the Probation of Offenders Act should not be applied to offences under S. 304-A since the offence is of a serious nature and the galloping trend of road accidents in India and also the devastating consequences visiting the victims and their families.<sup>8</sup>

Deterrence should be the prime consideration with regard to sentence being imposed on professional drivers causing death by rash and negligent driving.<sup>9</sup> This was elucidated by the following factors :—

i) A professional driver pedals the accelerator of the automobile almost throughout his working hours;

ii) He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness, when his leg is on the pedal of a vehicle in locomotion;

iii) He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident or even if any accident occurs it need not necessarily result in death of any human-being or even if such death ensues he might not be convicted of the offence, and lastly, if he is convicted, he would be dealt with leniently by the Court;

iv) He must always keep in mind the fear psyche that if he is convicted of the offence of causing death of a human-being due to his callous driving of the vehicle, he cannot escape from a jail sentence;

v) The above factors indicate the role of the Court, which it can play at the level of

8. Note 1 Para 13.

9. *Ibid.*



the trial Courts for lessening the high rate of motor accidents due to callous driving of automobiles.

7. Quoting Ratan Singh,<sup>10</sup> in Nagabhushanam's case<sup>11</sup> the Supreme Court laid down thus :—

“Nevertheless, the sentencing must have a policy of correction. This driver, if he has to become a good driver, must have a better training in traffic laws and moral responsibility with reference to potential injury to human life and limb. Punishment in this area must be accompanied by these components.”

The State must therefore, attach a course for better driving with a lovelier sense of responsibility in regard to punishment for driving offences. If the fitness of things, in case of men with poor families occasional parole and reformatory course appropriately suited to the individuals concerned may be implemented.

8. In motor accident cases, when a number of people sustain injuries and death occurs, it creates a stir in the society, sense of fear prevails all around. The negligence of one shatters the tranquillity of the collective<sup>12</sup> and, therefore, calls for adequate sentence under S. 304-A.

9. The Court considered that grant of compensation under Motor Vehicles Act, 1988 or one granted under S. 357(3) of Cr. P.C. cannot be regarded as a substitute in all cir-

10. Ratan Singh v. State of Punjab, AIR 1980 SC P. 84.

11. Nagabhushanam v. State of Karnatakan, AIR 2008 SC P. 2557.

12. Guru Basava Raj, AIR 2012 SC (Cri) P. 1586. See also Karnataka v. Krishna, AIR 1987 SC P. 861; Sevatha Perumal v. State of T.N., AIR 1991 SC P. 1463 and State of M.P. v. Saleem, AIR 2005 SC P. 3096.

cumstances for adequate sentence.<sup>13</sup> In Alister Anthony Pereira's case,<sup>14</sup> the Supreme Court held that offences under S. 304-A are punished because of inherent danger of acts specified, irrespective of the knowledge and intention to produce the result or irrespective of the result.

10. In conclusion, it may be stated.

i) The existing punishment provided for under S. 304-A needs a re-look. It is worthwhile to provide for a mandatory minimum sentence of one year and fine equivalent to the loss or injury caused;

ii) Persons who are repeatedly involved in motor accidents cases, driving licenses must be cancelled permanently;

iii) No amount of fine or compensation can be regarded as 'adequate punishment';

iv) Periodic training in traffic laws should be imparted to professional drivers;

v) Road safety management system must be improved and the traffic police should manage and regulate traffic in important places throughout the day;

vi) All vehicles drivers should carry first aid boxes and be trained to administer such treatment immediately. Professional drivers must undergo compulsory or health-care course at least in the area of first-aid;

vii) Municipalities must be directed to keep the roads in good condition. Many accidents occur due to bad roads;

viii) Persons must undergo rigorous training before driving licenses are granted;

ix) Strictness must be maintained to deal with cell-phone driving cases.

13. See Note 1.

14. Alister Anthony v. State of Maharashtra, AIR 2012 SC P. 3802.

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